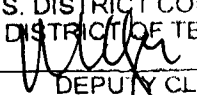




FILED

AUG 24 2023

 CLERK, U.S. DISTRICT COURT
 WESTERN DISTRICT OF TEXAS
 BY  DEPUTY CLERK

Craig Cunningham]

v.

[Watts Guerra, LLP]

§
§
§
§
§
§
§
§

CASE NO. 5:22-cv-363-OLG

JUDGE Orlando L. Garcia

Plaintiff's Supplemental Documents in support for Sanctions against Watts Guerra, LLP, Paige Boldt, Alicia O'Neil, Berken Media, and Robert Kenyon for Spoliation of evidence

1. Plaintiff Cunningham hereby supplies the additional evidence in support of sanctions against the above named individuals for spoliation of evidence in this case, by the intentional destruction of evidence after being notified of this lawsuit.
2. Plaintiff initially emailed Alicia O'neill, Mikail Watts, Paige Boldt, and Francisco Guerra on April 6, 2022 a copy of this lawsuit, which went unanswered.¹
3. Plaintiff followed up again with Paige Boldt directly on April 20, 2022 with a copy of the lawsuit, waiver of service, and recieved a response from Paige Boldt. Plaintiff notes he left his full name and phone number at the bottom of the complaint. This phone number ending in 1977 is also the same number he recieved some of the offending calls on and was contained on the retainer sent to craig.cunningham1980@gmail.com
4. Plaintiff at this point had not served, notified Berken Media, or communicated with Berken other than recieved several emails from Berken with multiple attempts over several months seeking the Plaintiff to sign a retainer with Watts Guerra, LLP for representation in the

¹ See email chain dated April 20th 2022 with email of April 6, 2022

Zantac litigation. All of these emails have subsequently been provided to the defendants in discovery, but at the time in April, 2022 they were not known or provided to Watts Guerra.

5. The only traceable information connecting the offending calls, emails, and tied to the supporting evidence was the Plaintiff's phone number and name. The only parties to this lawsuit at this point who could tie the Plaintiff to the calls and offending emails were Paige Boldt and the Watts Guerra defendants generally using the Plaintiff's name and phone number.
6. On April 26th, 2022, Plaintiff recieved an email from Ana.gutierrez@gurusagent.com indicating they had cancelled the document invite removing the Plaintiff's ability to access the retainer and essentially deleting the retainer in the Plaintiff's name. This is 5 days after being notified and 4 working days after Plaintiff notified Paige Boldt and by extension the Watts Defendants generally.
7. Nobody else in the country knew the details of Plaintiff's allegations or the specific phone number involved, and certainly not the Berken defendants as they had not even been served yet.
8. Even in the cease and desist letter sent from Watts to Berken didn't list the Plaintiff's phone number, name, or any other specific identifying information.
9. The destruction of evidence in this case is sanctionable conduct as it complicats the Plaintiff's prosecution of this case and adds additional expense and complications to the

case, but it also shows the direct control and communication between Watts Guerra over Berken Media and Berken's advertising efforts for the Zantac litigation.

10. More interestingly, Alicia O'Neill came back to the Plaintiff after the Plaintiff had shared the retainer and additional emails sent to another email address with her and sought permission to share these documents with the Berken defendants, presumably to aid them in destroying more evidence and deleting emails in June 24th of 2022. Mrs O'Neill indicated her great interest in other communication the Plaintiff had recieved in her email.² Interestingly enough, despite the clear indication and acknowledgement that "purports to show Berken has violated my cease and desist" to use her own words, at no time did Berken seek to enforce the cease and desist, sue Berken Media or Robert Kenyon.

11. In fact, it appears by recent filings that they are working together to thwart and hinder the Plaintiff's prosecution of this case. Aside from the obvious destruction of evidence as a result of Watts communicating with Berken, just last night, Watts served the Plaintiff with an affidavit from Berken sent from not the attorney's of Berken, but Watts Guerra directly, which the Plaintiff should consider to be a "formal supplementation of Defendants Watts Guerra LLP, Mikal Watts, Francisco Guerra, and Paige Boldt's initial disclosures, answers to interrogatories and Responses to requests for Production"³. Now it appears Berken Media and Robert Kenyon are testifying on behalf of the Watts Defendants colletively despite

² See email dated June 24th regarding 26f conference

³ See email and declaration from Robert Kenyon dated August 23rd 2023

violating a cease and desist by marketing on behalf of the Watts defendants and destroying evidence, which can only help the Watts defendants.

12. Given the earlier destruction of evidence after sharing information with the Watts defendants and attorney's, Plaintiff was reluctant to share any information or allow it to be forwarded to anyone.

13. Plaintiff adds this in support of his motion for sanctions against the individual attorney's and defendants in this case.

Date: August 24th 2023

Respectfully submitted,

Craig Cunningham, Plaintiff Pro-se, 3000 Custer Road, ste 270-206, Plano, Tx 75075, 615-348-1977

BY: /s/ Craig Cunningham

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing document was exchanged with all parties and/or all counsel of record *via email and by first class mail*, on this August 24th 2023

/s/ Craig Cunningham

Plaintiff, Pro-se

Case No. 5:22-cv-363; Cunningham v. Watts Guerra, et al - Defendants' Discovery Supplementation

From **Adria Martinez** <amartinez@wattsguerra.com>
To **projectpalehorse** <projectpalehorse@hushmail.com>, **Laura E. Kogan** <LKogan@beneschlaw.com>, **David Krueger** <dkrueger@beneschlaw.com>, **Allyson Cady** <ACady@beneschlaw.com>
Cc **Alicia O'Neill** <aoneill@wattsguerra.com>, **Edgar Hinostroza** <ehinostroza@wattsguerra.com>
Sent Wednesday, August 23, 2023 at 4:51 PM
Encrypted No
Signed No
Attachments Complete_with_DocuSign_2023-08-02_Declaratio.zip

Dear Plaintiff and Counsel of Record:

In connection with the above referenced matter, please find attached the Declaration of Robert Kenyon.

Please consider the foregoing to be a formal supplementation of Defendants Watts Guerra LLP, Mikal C. Watts, Francisco Guerra IV, and Paige Boldt's Initial Disclosures, and Answers to Interrogatories and Responses to Requests for Production, pursuant to the FEDERAL RULES OF CIVIL PROCEDURE.

Thank you.

Adria M. Martinez

Sr. Paralegal to Alicia D. O'Neill

Managing Paralegal – Mass Torts

WATTS GUERRA LLP

875 East Ashby Place

Suite 1200

San Antonio, TX 78212

210-447-0500, Ext. 6003

210-448-0530, Direct

****Please note our new office address above****

This message may contain confidential and/or privileged information. If you are not the addressee or authorized to receive this for the addressee, you must not use, copy, disclose, or take any action based on this message or any information herein.

Re: [EXTERNAL] Cunningham v watts guerra 26f conference

From Alicia O'Neill <aoneill@wattsguerra.com>
To Craig <projectpalehorse@hushmail.com>
Sent Friday, June 24, 2022 at 8:00 AM
Encrypted No
Signed No
Attachments WG Proposed SO.pdf, Attachment(1).txt, Attachment(2).html, Gmail - Reminder_ RV Watts Zantac Retainer Bonnie Deeraffenreid obo Patricia Massendale_ Signature Request from susana.valenzuela.pdf, Attachment(3).txt, Attachment(4).html, RV Watts Zantac Retainer Bonnie Deeraffenreid obo Patricia May 2022.pdf

Here is the zoom link for 9am and a draft CMO from our side.

I read what you said below about them violating my cease and desist. I would like for you to agree to let me use the email you sent me, and asked me not to forward, that purports to show that Berken (and his variously named entities) has violated my cease and desist by sending you emails. I'd also like to see any other communications you have received.

AO

Time: Jun 24, 2022 09:00 AM Central Time (US and Canada)

Join Zoom Meeting
<https://us02web.zoom.us/j/85362939961>

Meeting ID: 853 6293 9961
One tap mobile
+13462487799,,85362939961# US (Houston)
+16699006833,,85362939961# US (San Jose)

Dial by your location
+1 346 248 7799 US (Houston)
+1 669 900 6833 US (San Jose)
+1 253 215 8782 US (Tacoma)
+1 929 205 6099 US (New York)
+1 301 715 8592 US (Washington DC)
+1 312 626 6799 US (Chicago)

Meeting ID: 853 6293 9961
Find your local number: <https://us02web.zoom.us/j/kcQsAbGqm>

From: Craig <projectpalehorse@hushmail.com>
Date: Wednesday, June 22, 2022 at 4:28 PM
To: Alicia O'Neill <aoneill@wattsguerra.com>
Subject: Re: [EXTERNAL] Cunningham v watts guerra 26f conference

9AM is just fine.

On another note ...

Please stop mischaracterizing our conversations unless you want recordings and transcripts to start showing up on the docket of everything we say. I generally don't take such a drastic step of recording attorney's and get along well with most of them, but if you are going to say abject falsehoods, I will document accordingly and let the court decide.

I haven't heard back from his lawyers, and they have violated your cease and desist, but from my standpoint, I think you know that already and I do not think you are being fully transparent with me.

Sent using Hushmail

On 6/22/2022 at 1:46 PM, "Alicia O'Neill" <aoneill@wattsguerra.com> wrote:

I can do 9am but not 10am.

You already told me in our last call that you believe that we have no connection to Berken (or whatever other companies he calls himself).

Please let me know if his lawyers respond to you or continue to violate my cease and desist.

Alicia

From: Craig <projectpalehorse@hushmail.com>
Date: Wednesday, June 22, 2022 at 9:48 AM
To: Alicia O'Neill <aoneill@wattsguerra.com>
Subject: Re: [EXTERNAL] Cunningham v watts guerra 26f conference

Friday is just fine. Say 10am? No answer from Berken. You guys are wasting your time and money with this MSJ, btw.

We can talk more about this, but I'm going to need discovery, your law firm financials, and all legal marketing companies you are associated with identified and I'm going to file an opposition and 56d motion in response

to your premature SJ motion.

I think you are lying to me and misquoting my telephone calls in pleadings isn't a good way to go about things in this case. Let me know when you want to get serious and be honest about what's going on here

Sent using Hushmail

On 6/20/2022 at 1:14 PM, "Alicia O'Neill" <aoneill@wattsguerra.com> wrote:

Hi Mr. Cunningham,

Certainly. I'm traveling all week but will be available on Friday. Does that work?

Did Berken ever answer?

We are also filing a MSJ. I will email it to you once we file it.

Alicia

From: Craig <projectpalehorse@hushmail.com>

Date: Thursday, June 16, 2022 at 5:28 PM

To: Alicia O'Neill <aoneill@wattsguerra.com>

Subject: [EXTERNAL] Cunningham v watts guerra 26f conference

Alicia,

I wanted to get going on the 26f conference that the court ordered, when are you available for a call? I'm

CAUTION: This email originated from outside of Watts Guerra. Do not click links or open attachments unless you recognize the sender and know the content is safe.



c c <craig.cunningham1980@gmail.com>

ana.gutierrez@gurusagent.com has canceled the document invite

3 messages

signNow <mail@signnow.com>

Tue, Apr 26, 2022 at 9:21 AM

Reply-To: ana.gutierrez@gurusagent.com

To: craig.cunningham1980@gmail.com

signNow

Document Invite Canceled

The invitation for "**RV Watts Zantac Retainer - Craig Cunningham**" document was canceled by ana.gutierrez@gurusagent.com.

If you have any questions, please contact the sender.

Contact Sender

Best regards,
The signNow Team

Download on the
App StoreGET IT ON
Google Play[Contact Support](#)[Terms of Service](#)[Privacy Policy](#)

2022 © airSlate, Inc. All rights reserved.

17 Station Street, 3rd Floor, Brookline, MA 02445

c c <craig.cunningham1980@gmail.com>
To: aoneill@wattsguerra.com

Fri, Dec 9, 2022 at 7:10 PM

[Quoted text hidden]

c c <craig.cunningham1980@gmail.com>
To: dkrueger@beneschlaw.com, lkogan@beneschlaw.com

Fri, Jun 30, 2023 at 2:52 PM

----- Forwarded message -----

From: **signNow** <mail@signnow.com>
Date: Tue, Apr 26, 2022 at 9:21 AM
Subject: ana.gutierrez@gurusagent.com has canceled the document invite
To: <craig.cunningham1980@gmail.com>

[Quoted text hidden]

Fwd: cunningham v watts guerra,

From **Craig** <projectpalehorse@hushmail.com>
To **pboldt** <pboldt@wattsguerra.com>
Sent Wednesday, April 20, 2022 at 1:28 PM
Forwarded Yes
Encrypted No
Signed No
Attachments cunningham v Watts Guerra.pdf, AO399_WaiverServiceofSummons.pdf, cunningham v watts guerra filed complaint.pdf

FYI,

This is the email I sent previously. I got no response from anyone.

This case is against everyone and relates to robocalls soliciting for legal clients on behalf of Watts Guerra, LLP. While I am happy to do a stakeout at the homes of each of the individual defendants for service of process, I'd prefer to just serve and authorized person or you guys can waive service, which I am happy to accept as well. I've attached a waiver of service for your convenience. Please let me know if there is an authorized person that is actually going to be in the office who can accept service for the company and on behalf of the individuals.

I've attached a copy of the filed complaint as well.

Either way, I'd like to get moving with this case and get to the bottom of this as I'm sure there are other parties involved and I need to get them identified and served as well.

Thanks,
Craig Cunningham 615-348-1977

Sent using Hushmail

----- Forwarded message from "Craig" <projectpalehorse@hushmail.com> -----

Date: 4/6/2022 at 7:06 PM

Subject: cunningham v watts guerra,

To: aoneill@wattsguerra.com, mcwatts@wattsguerra.com, pboldt@wattsguerra.com, fg Guerra@wattsguerra.com

Attached is a copy of my lawsuit vs you and your firm. Please send over your malpractice/insurance carrier info when you can please.

Sent using Hushmail